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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JOHN HUMPHREY dba HORD ROOFING)
COMPANY and CALVIN HUMPHREY,)

Appellants,)

v.)

PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)

Respondent.)

PCHB No. 80-195

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of the \$250 civil penalty for the alleged violation of Section 9.03(b)(2) of Regulation I came before the Pollution Control Hearings Board, Nat W. Washington, presiding and David Akana, Member, at a formal hearing in Tacoma, Washington, on February 5, 1981. Appellants were represented by their attorney Douglas F. Albert; respondent was represented by its attorney Keith D. McGoffin. Court reporter Betty Koharski recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and
2 having heard the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260 respondent has filed with the Board a
6 certified copy of its Regulation I and amendments thereto which are
7 noticed.

8 II

9 On September 17, 1980, at about 12:30 p.m., respondent's inspector
10 noticed a plume of black colored smoke arising from a tarpot which
11 appellant John Humphrey, doing business as Hord Roofing Company, was
12 utilizing to apply an asphalt roof to Shakey's Pizza Parlor located at
13 Broad and Elliot Streets in Seattle. After positioning himself, he
14 observed the plume and recorded an opacity of 80 percent for six
15 consecutive minutes, which was of such opacity as to obscure an
16 observer's view to a degree equal to or greater than does smoke
17 described in Section 9.03(b)(1).

18 After discussing the matter with appellant Calvin Humphrey, who
19 was in immediate charge of the roofing operation, the inspector issued
20 Notice of Violation No. 17403.

21 On October 11, 1980, respondent, as authorized by Section 3.21 of
22 Regulation I, sent by certified mail to each of the appellants, a copy
23 of Notice and Order of Civil Penalty in the amount of \$250 for the
24 alleged violation of Section 9.03(b)(2) of respondent's Regulation I.
25 The notice and order of civil penalty is the subject of the instant
26 appeal.

1 III

2 Section 9.03(b) makes it unlawful for any person to cause or allow
3 the emission of any air contaminant for a period totaling more than
4 three minutes in any one hour which is of such opacity as to obscure
5 an observer's view by at least 20 percent.

6 IV

7 It was appellant's contention and the Board finds that the black
8 smoke was caused by a relatively small piece of asphalt which had
9 fallen into the chimney of the tarpot, and that the smoke lasted only
10 until the piece of asphalt was consumed, which took about 20 minutes
11 to a half hour.

12 V

13 Any Conclusion of Law which should be deemed a Finding of Fact is
14 hereby adopted as such.

15 From these Findings, the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 Appellant John Humphrey, doing business as Hord Roofing Company,
19 violated Section 9.03(b) (2) of Regulation I on September 11, 1980, as
20 alleged, by allowing or causing an air emission of smoke in excess of
21 the limits established by the Regulations.

22 II

23 The excess emission was caused by the lack of due care by an
24 employee or employees of appellant John Humphrey in allowing a piece
25 of asphalt to fall into the chimney of the tarpot. The fact that the
26 excess emission was caused by inadvertence lasted but a short time is

1 not a defense, but it may be taken into consideration, along with the
2 fact that appellant has no record of previous violation, in mitigating
3 the penalty.

4 III

5 There was no evidence connecting the appellant Calvin Humphrey
6 with the negligent operation of the tarpot, therefore, the penalty as
7 to him should be reversed.

8 IV

9 Any Findings of Fact which should be deemed a Conclusion of Law is
10 hereby adopted as such.

11 From these Conclusions, the Board enters the following

12 ORDER

13 The \$250 civil penalty as it relates to the defendent John
14 Humphrey is affirmed, provided, however, that \$150 of the civil
15 penalty is suspended on condition the appellant not violate
16 respondent's regulations for a period of two years from the date of
17 this Order.

18 The \$250 civil penalty as it relates to the appellant Calvin
19 Humphrey is reversed.

20 DATED this 17th day of February, 1981.

21 POLLUTION CONTROL HEARINGS BOARD

22 Nat W. Washington
23 NAT W. WASHINGTON, Chairman

24 David Akana
25 DAVID AKANA, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER